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ATTORNEY DOCKET NO. CONFIRMATION NO. FIRST NAMED INVENTOR FILING DATE APPLICATION NO. 1045 55915 79422 Marguerite B. McDonald 11/09/2001 10/014,373 EXAMINER 09/24/2004 7590 THALER, MICHAEL H Martin Korn, BAKER, DONELSON, BEARMAN & CALDWELL BERKOWITZ DANIELLE L. TROSTORFF PAPER NUMBER ART UNIT 201 ST. CHARLES AVE., STE. 3600 3731 NEW ORLEANS, LA 70170

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	N)	
	10/014,373	MCDONALD, N	ARGUERITE B.	
Office Action Summary	Examiner	Art Unit		
	Michael Thaler	3731		
The MAILING DATE of this communication a	ppears on the cover si	neet with the correspondence	address	
Period for Reply				
A SHORTENED STATUTORY PERIOD FOR REF THE MAILING DATE OF THIS COMMUNICATION  - Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a  - If NO period for reply is specified above, the maximum statutory peri  - Failure to reply within the set or extended period for reply will, by sta Any reply received by the Office later than three months after the may earned patent term adjustment. See 37 CFR 1.704(b).	1.136(a). In no event, however reply within the statutory minimulated will apply and will expire SIX	r, may a reply be timely filed um of thirty (30) days will be considered t (6) MONTHS from the mailing date of the	imety. is communication.	
Status				
1) Responsive to communication(s) filed on $\underline{2}$	1 June 2004.			
2b) This potion is EINAL	his action is non-final.	s action is non-final.		
Since this application is in condition for allo	Since this application is in condition for allowance except for formal matters, prosecution as to the ments is			
closed in accordance with the practice under	er <i>Ex part</i> e <i>Quayle</i> , 19	35 C.D. 11, 453 O.G. 213.		
Disposition of Claims				
4) Claim(s) <u>1-38</u> is/are pending in the applicated 4a) Of the above claim(s) <u>1-27 and 36-38</u> is 5) Claim(s) is/are allowed.	ion. s/are withdrawn from c	onsideration.		
5) Claim(s) is/are allowed. 6) Claim(s) <u>28-35</u> is/are rejected.		•		
7) Claim(s) is/are objected to.				
8) Claim(s) are subject to restriction ar	nd/or election requirem	nent.		
Application Papers	niner		·	
9)☐ The specification is objected to by the Exar 10)☐ The drawing(s) filed on is/are: a)☐	accented or b)☐ obje	ected to by the Examiner.		
Applicant may not request that any objection to	the drawing(s) be held i	n abeyance. See 37 CFR 1.85(	a).	
Replacement drawing sheet(s) including the co	rrection is required if the	drawing(s) is objected to. See	37 CFR 1.121(d).	
11) The oath or declaration is objected to by the	e Examiner. Note the	attached Office Action or for	n PTO-152.	
11) Ine oath or declaration is objected to by the				
Priority under 35 U.S.C. § 119				
12) ☐ Acknowledgment is made of a claim for for a) ☐ All b) ☐ Some * c) ☐ None of:				
1. Certified copies of the priority documents have been received.				
2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage				
3. Copies of the certified copies of the application from the International B	ureau (PCT Rule 17.2	(a)).		
* See the attached detailed Office action for	a list of the certified co	ppies not received.		
* See the attached detailed Office action for	a a. 4.0 co			
		*		
Attachment(s)	<b>4</b> 1 □	Interview Summary (PTO-413)		
Notice of References Cited (PTO-892)     Notice of Draftsperson's Patent Drawing Review (PTO-94)	, <del></del>	Paper No(s)/Mail Date.	(DTO 152)	
3) N Information Disclosure Statement(s) (PTO-1449 or PTO/S	SB/081 9/ LJ	Notice of Informal Patent Application	on (PTO-104)	
Paper No(s)/Mail Date <u>11/9/01 11/24/03</u> .		Onion		

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Applicant's election with traverse of Invention II and the species of the trapezoidal cross-sectional shape in the reply filed on June 21, 2004 is acknowledged. The traversal is on the ground(s) that it would not be unduly burdensome to include all disclosed shapes in a single application. This is not found persuasive because it would be unduly burdensome to include all disclosed shapes in a single application.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-27 and 36-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on June 21, 2004.

The disclosure is objected to because of the following informalities: In claim 30, line 2 "arpetures" should be "apertures". In claim 31, line 2 "arperture" should be "aperture". Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The syringe referred to in claim 32 appears to be the same element as the fluid source defined in claim 29, resulting in a double recitation of the same element. The fluid source defined in claim 29 is part of the claimed combination. However, the syringe referred to in claim 32 is not part of the claimed combination in view of the phrase "adapted to be connected" in line 2. Thus, it is unclear if the syringe is part of the claimed combination or not.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaacobi et al. (6,413,245) in view of Doshi et al. (6,443,944). Yaacobi et al. disclose handle 56, spatulalike member 52, 54 including an arcuate distal section 52. Yaacobi et al. disclose the spatula-like member as having a

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circular rather than a trapezoidal cross-sectional shape as claimed. However, Doshi et al. teach that the tubular member of a surgical instrument may have a trapezoidal rather than a circular cross-sectional shape (col. 6, lines 47-52) apparently since each shape would work equally well. It would have been obvious to make the cross-sectional shape of the Yaacobi et al. instrument trapezoidal rather than a circular for this reason.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note col. 13, lines 57-63 of Constantz et al. (6,562,020) and col. 3, lines 6-8 of Corlew (6,030,393).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

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mht 9/20/04 MICHAEL THALER
PRIMARY EXAMINER
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